

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 25, 2006

STATE OF TENNESSEE v. TELLY JONES

Direct Appeal from the Circuit Court for Bledsoe County
No. 75-2004 J. Curtis Smith, Judge

No. E2006-00004-CCA-R3-CD - Filed October 30, 2006

The defendant, Telly Jones, pled guilty to possession of a controlled substance (cocaine) in a penal institution, a Class C felony. *See* Tenn. Code Ann. § 39-16-201. In exchange for his guilty plea, the defendant was sentenced to three years as a standard offender to be served consecutively to his prior sentences. On appeal, the defendant argues that the circuit court erred by ordering his sentence to be served consecutively to his prior sentences rather than concurrently. Following our review of the parties' briefs and applicable law, we affirm the circuit court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which DAVID G. HAYES and ROBERT W. WEDEMEYER, JJ., joined.

Philip A. Condra, District Public Defender, and Robert G. Morgan, Assistant Public Defender, Jasper, Tennessee, for the appellant, Telly Jones.

Paul G. Summers, Attorney General and Reporter; J. Ross Dyer, Assistant Attorney General; J. Michael Taylor, District Attorney General; and Steven Strain, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On September 8, 2004, the defendant was indicted for possession of a controlled substance in a penal institution after a search of the defendant's cell revealed four grams of cocaine. Thereafter, on May 25, 2005, the defendant pled guilty to the offense, agreeing to a three-year sentence with the manner of service to be determined by the court. A sentencing hearing was held on July 27, 2005. At the hearing, the defendant was the only witness to testify. The defendant testified that he was presently incarcerated. The defendant asserted that he had committed the offenses for which he was presently incarcerated because he had been affiliated with a gang. However, he claimed that he would not be a threat to the community once released because he was no longer in a gang and he valued life. He asserted that he had completed anger management and

drug and alcohol classes while incarcerated. The defendant's presentence report was introduced into evidence. According to the report, the defendant had a criminal history consisting of multiple convictions for especially aggravated and aggravated robbery. The report also revealed that the defendant amassed forty-five disciplinary violations while incarcerated. At the conclusion of the sentencing hearing, the court found the defendant had an extensive record of criminal activity and ordered the defendant's three-year sentence to be served consecutively. The defendant appealed.

On appeal, the defendant argues that the circuit court erred in ordering his sentence to be served consecutively. Specifically, the defendant contends that the court failed to find other facts relevant to the case such as whether the defendant was a "dangerous offender and that the sentence was reasonably related to the severity of the offense," or "whether the sentence was the least severe measure necessary to protect the public," or the "defendant's potential for rehabilitation."

When an accused challenges the length and manner of service of a sentence, this court conducts a de novo review of the record with a presumption that the trial court's determinations are correct. Tenn. Code Ann. § 40-35-401(d). This presumption of correctness is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances. *State v. Pettus*, 986 S.W.2d 540, 543-44 (Tenn. 1999). However, if the record shows that the trial court failed to consider the sentencing principles and all relevant facts and circumstances, then review of the challenged sentence is purely de novo without the presumption of correctness. *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). On appeal, the party challenging the sentence imposed by the trial court has the burden of establishing that the sentence is erroneous. Tenn. Code Ann. § 40-35-401(d), Sentencing Commission Comments. In conducting our de novo review of a sentence, this court must consider (a) the evidence adduced at trial and the sentencing hearing; (b) the pre-sentence report; (c) the principles of sentencing; (d) the arguments of counsel as to sentencing alternatives; (e) the nature and characteristics of the offense; (f) the enhancement and mitigating factors; and (g) the defendant's potential or lack of potential for rehabilitation or treatment. *Id.* §§ 40-35-103(5), -210(b). We will uphold the sentence imposed by the trial court if (1) the sentence complies with the purposes and principles of the 1989 Sentencing Act, and (2) the trial court's findings are adequately supported by the record. *See State v. Arnett*, 49 S.W.3d 250, 257 (Tenn. 2001).

A trial court may impose consecutive sentencing upon a determination by a preponderance of the evidence that one or more of the criteria set forth in Tennessee Code Annotated section 40-35-115(b) exists. Because these criteria are stated in the alternative, the trial court need only find one of the criteria present to support a determination of consecutive sentencing. Accordingly, a trial court may impose consecutive sentencing if it determines that the "defendant is an offender whose record of criminal activity is extensive." *See* Tenn. Code Ann. § 40-35-115(b)(2).

Upon review of the record, we determine that the trial court considered the sentencing principles and all relevant facts and circumstances attendant to finding that the defendant had an extensive criminal record. The presentence report reflects that the defendant was convicted of six counts of aggravated robbery and one count of especially aggravated robbery. The report also

revealed that the defendant amassed forty-five disciplinary violations while incarcerated. Therefore, we conclude the trial court did not abuse its discretion in imposing consecutive sentencing, and the defendant is not entitled to relief on this issue. The judgment of the circuit court is affirmed.

J.C. McLIN, JUDGE